IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

CONTEMPT PETITION NO.116 OF 2004

IN

NOTICE OF MOTION NO.2708 OF 2004

IN

APPEAL NO.558 OF 2004

IN

SUIT NO.4007 OF 2002

...

Mrs.Mehrunnisa Mohd.Mustafa Basalat Chaudhary ...Petitioner

v/s.

Credence Property Developers Pvt. Ltd. & Ors. ...Respondents

...

Mr.Jayesh Bhat for the Petitioner.

Mr.Gaurav Joshi i/b Divekar & Co. for the Respondents.

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CORAM: D.K.DESHMUKH, J.

DATED: 23RD JANUARY,2007

P.C.:

1. According to the Petitioner, the Respondents have committed willful breach of the order dated 21st October, 2004 passed in Notice of Motion No.2708 of 2004 in Appeal No.558 of 2004 by the Division Bench of this Court. By that order the Respondents were permitted to complete the construction of G & H Wings as per the sanctioned plan and the Respondents were restrained from proceeding with any further construction in respect of the commercial complex. According to the Petitioner, the Respondents have taken up work of construction of commercial complex.

2. The Respondents have filed reply. In paragraph 6 of the reply, the Respondents have stated that the work of construction of G & H Wings is in progress. According to them, photographs which are relied on by the Petitioner show the work in respect of basement which is for common amenity like car parking space

which is to be used for all the buildings. It is further stated that so far as the portion below the commercial complex is concerned, the Respondents are taking up work of construction only upto the ramp which leads to the basement that is required under the composite layout plan sanctioned by the Corporation. They further stated that unless ramp work is done, basement would be of no use and there would be no access to other buildings. It is further stated that the commercial complex is proposed to be built on the said ramp which does not form the part of the commercial complex. It is further stated that the basement including portion below the commercial complex is being constructed as per the I.O.D. and commencement certificate given in respect of G & H Wings. A part of basement is physically below the commercial complex. The Respondents have stated that they have not commenced any construction of the commercial building. Apart from these statements on oath, the learned Counsel appearing for the Respondents have stated that on the basis of the construction that the Respondents have carried out in relation to portion below the commercial complex, the Respondents will not claim any equity. He has further stated that unless the court permits the

Respondents, the Respondents will not make any further construction in relation to the commercial complex.

3. In my opinion, in view of the statements made on oath in the affidavit of the Respondents as also the statement made by the learned Counsel appearing for the Respondents that the Respondents would not claim any equity, no further action is required to be taken as interest of the Petitioner is fully safeguarded. Petition disposed of. Show cause notice discharged.

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